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1 **UNITED STATES DISTRICT COURT**
2 **NORTHERN DISTRICT OF CALIFORNIA**

3 CHASOM BROWN, WILLIAM BYATT,
4 JEREMY DAVIS, CHRISTOPHER
5 CASTILLO, and MONIQUE TRUJILLO
6 individually and on behalf of all similarly
7 situated,

8 Plaintiffs,
9 vs.
10 GOOGLE LLC,
11 Defendant.

12 Case No.: 4:20-cv-03664-YGR-SVK

13 **DECLARATION OF MARK MAO IN
14 OPPOSITION TO GOOGLE'S MOTION
15 TO STRIKE (DKT. 733)**

16 Judge: Hon. Susan van Keulen

DECLARATION OF MARK MAO

1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs in this matter. I am an attorney at law duly licensed to practice before all courts of the State of California. I have personal knowledge of the matters set forth herein and am competent to testify.

2. I submit this declaration with Plaintiffs' opposition to Google's motion to strike
(Dkt. 733).

3. On July 21, 2022, Google produced the Document at issue here, with redactions.

4. On August 3, 2022, Plaintiffs sent counsel for Google an email identifying examples of recently produced documents that Google de-privileged where Plaintiffs believe they have been prejudiced by the belated production. Plaintiffs within that email identified the Document at issue here.

5. Counsel for Google sent Plaintiffs a clawback notice on August 26, seeking to claw back the Document in its entirety. Plaintiffs that weekend (on August 28) sent counsel for Google an email providing their position and seeking to meet and confer.

6. Plaintiffs isolated the Document and are now unable to access it. Plaintiffs wrote their opposition brief without re-reviewing the Document.

7. After a meet and confer on August 29, Plaintiffs proposed that Google submit the Document for *in camera* review, and promised that Plaintiffs would revise any filing that referred to portions of the Document the Court found to be privileged. To facilitate that process, Plaintiffs asked that Google provide a privilege log entry for each individual email within the Document. Plaintiffs also asked Google to provide additional information about the nature of the communications, including the author of each email within the thread, and Plaintiffs promised not to use Google's provision of additional information as a basis for arguing that Google waived any privilege. Plaintiffs sent this proposal on August 30, but Google did not respond until 10:30 p.m. PT on September 2. Google declined to provide any of the requested information and instead informed Plaintiffs that it would be filing a motion to strike, which it filed within the hour.

8. Attached hereto as **Exhibit 1** is a true and correct copy of Google's fourth privilege log, served on February 23, 2022.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of September, 2022, at San Francisco, California.

/s/ Mark Mao